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Kerry A. Brennan (KB-2400)

Attorneys for Plaintiff
VENTURA FOODS, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VENTURA FOODS, LLC,

Plaintiff,

v.

SUPREME OIL COMPANY,
INCORPORATED a.k.a. ADMIRATION
FOODS,

Defendant.

07 CV 7338

DECLARATION OF TERRY SPLANE

I, TERRY SPLANE, declare under penalty of perjury:

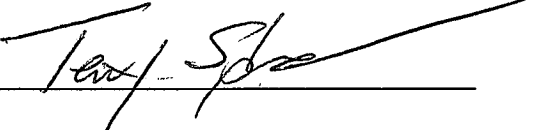
1. I am the Vice President of Marketing of Ventura Foods, LLC ("Ventura"). The statements made herein are based on my personal knowledge, company records, or as otherwise indicated. This declaration is submitted in further support of Ventura's application for a preliminary injunction.
2. Ventura first learned of a product called "Mega Fry" in February 2007.
3. On February 23, 2007, I received an email from a Ventura regional manager (attached hereto as Exhibit 1).

4. The email indicated that one of Ventura's distributors, Maximum Quality Foods ("Maximum"), had informed us that Supreme was selling a new oil that was listed as "New Mel-Fry (Mega Fry)" on a Wonder Foods invoice (attached to the email) with "the exact same look as Mel-Fry including the yellow container." At this time, Ventura did not have access to a MEGA-FRY container.
5. Ventura promptly investigated Supreme's MEGA-FRY product. The investigation was turned over to Ventura's inside counsel and outside intellectual property counsel.
6. Because the first Wonder Foods invoice Ventura received was blurry, Ventura requested and subsequently received a copy of another invoice from Maximum (a copy of that invoice is attached hereto as Exhibit 2). A redacted version of that invoice was ultimately attached to Ventura's cease-and-desist letter to Supreme.
7. The purchaser of the MEGA-FRY product on the invoice is a restaurant in New York, typical of the customers of Ventura's MEL-FRY[®] product.
8. In order to evaluate whether the trade name and trade dress of Supreme's MEGA-FRY product infringed Ventura's MEL-FRY[®] product, Ventura needed to obtain a product sample. However, because such products are sold only to distributors, Ventura was unable to purchase it through a retailer.
9. Therefore, Ventura sought to purchase a MEGA-FRY product sample.
10. Ventura received a product sample of the MEGA-FRY product in late April; it was then able to evaluate its trademark and trade dress claims against Supreme.

11. Ventura's investigation culminated in a May 22, 2007 cease-and-desist letter to Supreme (attached as Exhibit I in my prior declaration dated 8/16/07).
12. After Ventura sent its cease-and-desist letter, Ventura and Supreme spent nearly the next three months attempting to settle this matter.
13. When such discussions did not result in settlement, Ventura filed the instant action on August 16, 2007 and applied for a preliminary injunction the following day.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 9, 2007



Terry Splane

Splane Declaration Exhibit 1 – 2/23/07 Email from E. Leising to M. Castagna et al. re
MEGA-FRY from Supreme and attached 2/9/07 Wonder
Foods Invoice (copy marked as Exhibit 12 at the 9/25/07
Deposition of Michael Leffler)

Splane Declaration Exhibit 2 – 9/5/06 Wonder Foods Invoice

EXHIBIT 1

-----Original Message-----
From: LEISING, EARL

Sent: Friday, February 23, 2007 9:22 AM

To: CASTAGNA, MIKE; ADRIAN, HOLLY; SANNA, CHRIS; STOLLE, JIM; GESKE, STEVE; SPLANE, TERRY

Subject: Mega Fry from Supreme

I'm not sure how well you can see this but on this invoice from Wonder Foods they are selling a new oil from Supreme as "New MelFry (Mega Fry)". It is packed 3/10 quart and they are selling it for \$32.95. Which means Supreme is selling it to Wonder for probably less than \$30. According to Gary at Maximum it is 100% Soybean. He said Supreme contacted him to bring it in as well but he is loyal to Mel-Fry. He said it is the exact same look as Mel-Fry including the yellow container.

<<Wonder Invoice.jpg>>

Earl Leising

Region Manager - Ventura Foods

139 The Paddock

Williamsville, NY 14221

(716) 626-9553

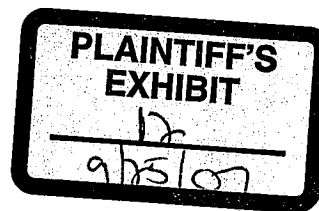




EXHIBIT 2

**WONDER FOODS**

57-10 Flushing Avenue
Maspeth, NY 11378
Email: WfBklyn@aol.com

Local Phone: (718) 387-2022 Tel: (718) 387-2081
Toll Free: (877) 418-0666 Fax: (718) 387-2596

*** INVOICE ***

INVOICE NO

700134

INVOICE DATE

09/05/06

KENNEDY FR CK(2273)**
2273 CROTONA AVE

BRONX NY 11111

S
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P
T
O

KENNEDY FR CK(2273)**
2273 CROTONA AVE

BRONX NY 11111
718-365-6094

ITEM	ORDER NO	ORDER DATE	SHIP VIA	TERMS	ROUTE NO	PAGE
01	701388	09/05/06	WONDER	*COD* CASH ONLY	01 SONU	

ITEM	QTY	U/M	BRAND	PRODUCT DESCRIPTION	PACK SIZE	PRICE	NET WEIGHT	EXTENSION
1	1	CSCS	LAMB WEST	APPLE TURNOVERS, IND.	1/120CT	26.95	10.00	26.95
1	1	CSCS		TWINE (FOR PIZZA)	1/EA	8.95	.00	8.95
1	1	CSCS		PIZZA BOXES 18	1/50CNT	17.95	.00	17.95
1	1	PCLB	MILLFLOW	GARLIC POWDER <i>Rel</i>	12/100Z	12.95	1.13	14.57
3	3	CSCS	HEINZ	PC KETCHUP (HEINZ)	1/1000CT	19.50	67.50	58.50
1	1	CSCS	SCOTT	LO-MAST NAPKINS	1/100000	22.95	.00	22.95
2	2	CSCS	TOWER	BEEF PATTIES MILD	1/50CNT	33.95	.00	67.90
1	1	CSCS	WONDER'S	BRD MOZZARELLA STICKS	6/2LBS.	27.95	12.00	27.95
1	1	CSCS	PIERCE	PORCORN OK MBH10	1/10LBS	22.95	10.00	22.95
1	1	CSCS	CHIK	CHICKEN NUGGET	1/10 LBS	16.95	10.00	16.95
1	1	CSCS	OASIS	P/C TARTAR SAUCE	1/200CT.	5.95	.00	5.95
1	1	CSCS	PROMISE	P/C MARGARINE CUPS	600/5 GM	15.95	18.00	15.95
1	1	CSCS		YEAST DRY	1/5 KG	6.95	.00	6.95
1	1	CSCS	KRONOS	BF GYROS STRIPS UC <i>Short</i>	128/1.25	22.95	11.56	22.95
1	1	CSCS		APRON	1/100CNT	7.95	.00	7.95
1	1	CSCS	OASIS	P/C BBQ SAUCE POUCH	1/200CT.	5.95	4.50	5.95
2	2	CSCS	PIERCE	WING ZING 25LB	1/25LBS	62.95	50.00	125.90
1	1	CSCS	MOORE	ONION RINGS	8/2LB BAG	15.95	16.00	15.95
3	3	CSCS	GENRLMILLS	ALL TRUMPS FLOUR	1/50LBS.	13.50	150.00	40.50
6	6	CSCS	BONANZA	FRENCH FRIES BONANZA	6/6	15.95	.00	95.70
2	2	CSCS		NEWMELFRY (MEGA FRY) <i>Return</i>	3/100T	32.95	.00	65.90
1	1	CSCS		STRAWS <i>Short</i>	24/500	33.95	.00	33.95

S: 33 TOTAL PIECES: 1

TOTAL OUTSTANDING 7,160.25

A NEW ADDRESS IS 57-10 FLUSHING AVE., MASPETH, NY 11378 !!!!! *****

PKR 01
DRV 01
TRK 01
STOP 010

Handwritten: R.A. CASH

Handwritten: Total \$ 814.00

Handwritten: \$591.50

Handwritten: \$194

SUB
TOTAL

729.22

TAX

AMOUNT
DUE

Y THIS AMOUNT : 729.22

CUSTOMER COPY